

Part 3

Provisions Applicable to Preconstruction Liens and Construction Liens

38-1a-301 Those entitled to lien -- What may be attached.

- (1) Except as provided in Section 38-11-107, a person who provides preconstruction service or construction work on or for a project property has a lien on the project property for the reasonable value of the preconstruction service or construction work, respectively, as provided in this chapter.
- (2) A person may claim a preconstruction lien and a separate construction lien on the same project property.
- (3)
 - (a) A construction lien may include an amount claimed for a preconstruction service.
 - (b) A preconstruction lien may not include an amount claimed for construction work.
- (4) A preconstruction or construction lien attaches only to the interest that the owner has in the project property that is the subject of the lien.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-302 Land covered by lien -- Multiple lots occupied by improvement -- What a lien attaches to.

- (1) A preconstruction or construction lien extends to and covers as much of the land on which the improvement is made as necessary for the convenient use and occupation of the land.
- (2) If an improvement occupies two or more lots or other subdivisions of land, the lots or subdivisions are considered as one for the purposes of this chapter.
- (3) A preconstruction or construction lien attaches to all franchises, privileges, appurtenances, machinery, and fixtures pertaining to or used in connection with the improvement.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-303 Limits on attachment, garnishment, and execution levy -- Subcontractor lien not affected by payments, debts, offsets, and counterclaims involving other parties.

- (1) An assignment, attachment, or garnishment of or encumbrance or execution levy on money that an owner owes to an original contractor is not valid as against a subcontractor's preconstruction or construction lien.
- (2) An assignment, attachment, or garnishment of or encumbrance or execution levy on money that an original contractor owes to a subcontractor is not valid as against a lien of a laborer employed by the day or piece.
- (3) The preconstruction or construction lien of a subcontractor may not be diminished, impaired, or otherwise affected by:
 - (a) a payment, whether in cash or in-kind, to the original contractor or another subcontractor;
 - (b) a debt owed by the original contractor to the owner;
 - (c) a debt owed by another subcontractor to the original contractor or to a third subcontractor; or
 - (d) an offset or counterclaim in favor of the owner against the original contractor, or in favor of the original contractor against another subcontractor, or in favor of another subcontractor against a third subcontractor.

Enacted by Chapter 278, 2012 General Session

38-1a-304 Liens on multiple properties in one claim.

- (1) A claimant may claim a preconstruction or construction lien against two or more improvements owned by the same person.
- (2) If a claimant claims a preconstruction or construction lien against two or more improvements owned by the same person, the claimant shall designate the amount claimed to be due on each of the improvements.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-305 Payments applied first to preconstruction lien.

Unless an agreement waiving or limiting a right under a preconstruction or construction lien expressly provides that a payment is required to be applied to a specific lien, mortgage, or encumbrance, a payment to a person claiming both a preconstruction lien and a construction lien shall be applied first to the preconstruction lien until paid in full.

Enacted by Chapter 278, 2012 General Session

38-1a-306 Substantial compliance.

- (1) Substantial compliance with the requirements of this chapter is sufficient to claim, as applicable, a preconstruction lien or a construction lien.
- (2) Subsection (1) may not be construed to excuse compliance with or affect the requirement to file:
 - (a) a notice of preconstruction service as provided in Section 38-1a-401 in order to claim a preconstruction lien; or
 - (b) a preliminary notice as provided in Section 38-1a-501 in order to claim a construction lien.

Amended by Chapter 464, 2013 General Session

38-1a-307 Contesting certain notices.

- (1) A contesting person who believes that a contestable notice lacks proper basis and is therefore invalid may request from the person who filed the notice evidence establishing the validity of the notice.
- (2) Within 10 days after receiving a request under Subsection (1), the person who filed the contestable notice shall provide the requesting person evidence that the notice is valid.
- (3) If the person who filed the notice does not provide timely evidence of the validity of the contestable notice, the person who filed the notice shall immediately cancel the notice from the registry in the manner prescribed by the division by rule.

Enacted by Chapter 278, 2012 General Session

38-1a-308 Intentional submission of excessive lien notice -- Criminal and civil liability.

- (1) As used in this section, "residential project" means a project on real property:
 - (a) for which a preconstruction service or construction work is provided; and
 - (b) that consists of:
 - (i) one single-family residence; or
 - (ii) one multi-family residence that contains no more than four units.
- (2) A person is guilty of a class B misdemeanor if:

- (a) the person intentionally submits for recording a notice of preconstruction lien or notice of construction lien against any property containing a greater demand than the sum due; and
 - (b) by submitting the notice, the person intends:
 - (i) to cloud the title;
 - (ii) to exact from the owner or person liable by means of the excessive notice of preconstruction or construction lien more than is due; or
 - (iii) to procure any unjustified advantage or benefit.
- (3)
- (a) As used in this Subsection (3), "third party" means an owner, original contractor, or subcontractor.
 - (b) In addition to any criminal penalty under Subsection (2), a person who submits a notice of preconstruction lien or notice of construction lien as described in Subsection (2) is liable to a third party who is affected by the notice of preconstruction lien or the notice of construction lien for twice the amount by which the lien notice exceeds the amount actually due or the actual damages incurred by the owner, original contractor, or subcontractor, whichever is greater.
- (4) The parties to a claim described in Subsection (3)(b) who agree to arbitrate the claim shall arbitrate in accordance with Subsections (5) through (15) if the notice of preconstruction lien, or the notice of construction lien, that is the subject of the claim is:
- (a) for a residential project; and
 - (b) for \$50,000 or less.
- (5)
- (a) Unless otherwise agreed to by the parties, a claim that is submitted to arbitration under this section shall be resolved by a single arbitrator.
 - (b) All parties shall agree on the single arbitrator described in Subsection (5)(a) within 60 days after the day on which an answer is filed.
 - (c) If the parties are unable to agree on a single arbitrator as required under Subsection (5)(b), the parties shall select a panel of three arbitrators.
 - (d) If the parties select a panel of three arbitrators under Subsection (5)(c):
 - (i) each side shall select one arbitrator; and
 - (ii) the arbitrators selected under Subsection (5)(d)(i) shall select one additional arbitrator to be included in the panel.
- (6) Unless otherwise agreed to in writing:
- (a) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (5)(b); or
 - (b) if an arbitration panel is selected under Subsection (5)(d):
 - (i) each party shall pay the fees and costs of that party's selected arbitrator; and
 - (ii) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (5)(d)(ii).
- (7) Except as otherwise provided in this section or otherwise agreed to by the parties, an arbitration proceeding conducted under this section shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.
- (8)
- (a) Subject to the provisions of this section, the Utah Rules of Civil Procedure and the Utah Rules of Evidence shall apply to an arbitration proceeding under this section.
 - (b) The Utah Rules of Civil Procedure and the Utah Rules of Evidence shall be applied liberally with the intent of resolving the claim in a timely and cost-efficient manner.

- (c) Subject to the provisions of this section, discovery shall be conducted in accordance with Rules 26 through 37 of the Utah Rules of Civil Procedure and shall be subject to the jurisdiction of the district court in which the claim is filed.
- (d) Unless otherwise agreed to by the parties or ordered by the court, discovery in an arbitration proceeding under this section shall be limited to the discovery available in a tier 1 case under Rule 26 of the Utah Rules of Civil Procedure.
- (9) A written decision by a single arbitrator or by a majority of the arbitration panel shall constitute a final decision.
- (10) An arbitration award issued under this section:
 - (a) shall be the final resolution of all excessive notice claims described in Subsection (3)(b) that are:
 - (i) between the parties;
 - (ii) for a residential project; and
 - (iii) for \$50,000 or less; and
 - (b) may be reduced to judgment by the court upon motion and notice, unless:
 - (i) any party, within 20 days after the day on which the arbitration award is served, files a notice requesting a trial de novo in district court; or
 - (ii) the arbitration award has been satisfied.
- (11)
 - (a) Upon filing a notice requesting a trial de novo under Subsection (10):
 - (i) unless otherwise stipulated to by the parties or ordered by the court, the parties are allowed an additional 60 days for discovery; and
 - (ii) the claim shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and the Utah Rules of Evidence in the district court.
 - (b) The additional discovery time described in Subsection (11)(a)(i) shall run from the day on which the notice requesting a trial de novo is filed.
- (12) If the plaintiff, as the moving party in a trial de novo requested under Subsection (10), does not obtain a verdict that is at least 10% greater than the arbitration award, the plaintiff is responsible for all of the nonmoving party's costs, including expert witness fees.
- (13) If a defendant, as the moving party in a trial de novo requested under Subsection (10), does not obtain a verdict that is at least 10% less than the arbitration award, the defendant is responsible for all of the nonmoving party's costs, including expert witness fees.
- (14) If a district court determines, upon a motion of the nonmoving party, that the moving party's use of the trial de novo process was filed in bad faith, as defined in Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.
- (15) All arbitration awards issued under this section shall bear postjudgment interest pursuant to Section 15-1-4.

Amended by Chapter 303, 2015 General Session

38-1a-309 Interest rate on lien.

Unless otherwise specified in a lawful contract between the owner-builder and the person claiming a lien under this chapter, the interest rate applicable to the lien is the rate described in Subsection 15-1-1(2).

Enacted by Chapter 330, 2012 General Session